(1)

Supreme Court, U.S.
FILED

No. 99 307 JUL 12 1999

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Teddy I. Moore, et al.,

Petitioners,

v.

Time Inc. et al

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

Petition for Writ of Certiorari

Teddy I. Moore,
160-05 Horace Harding,
Flushing, NY 11365
Tel. (718) 939-4866

28PP

Questions Presented

1. Whether the industry of sweepstakes fraud is subject to Federal jurisdiction.

2. Whether the judgment of the court of appeal is arbitrary and capricious and whether this is a trend in second circuit.

3. Whether sanctions are justified under the circumstances.

List of Parties

4. All parties do not appear in the caption of the case on the cover page. A list of parties to the proceedings in the court whose judgment is the subject of this petition is as follows.

Petitioners

Josef Lax

Respondents

Elizabeth Matthews

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. Carpenter Vs. U. S. 19, 76 (1987)	4
2. McNally Vs. U.S. 483 U.S., 350, 358 (1987)	4
3. Hammerschmidt Vs. U. S., 187, 188, (1929)	4
STATUTES AND RULES	
1. 28 U.S.C., 1332, 1331, 1367	4
2. Rico - U.S.C. 1961 - 1968	1, 4
3. 28 U.S.C. 1254 (1)	1
4. Mail Fraud - 18 U.S.C. 1341	4
5. Fed R. Civ P. 60 (b)	5
OTHER	
U.S. Constitution, (Fourth, Fifth Amendment)	1

TABLE OF CONTENTS

Opinions below	1
Jurdisdiction	1
Constitutional and statutory provision involoved	1
Statement of the case	2 - 3
Reasons for granting the writ	6
Conclusion	6

INDEX TO APPENDICES

	Page
APPENDIX A U.S. District Court of Appeal for The Second Circuit judgment.	7 - 9
APPENDIX B District Court for The Eastern District of New York judgment	10 - 15
APPENDIX C Complaint.	16 - 19
APPENDIX D Petitioner Reply	20 - 24
APPENDIX E Order to deny Rule 60 (a) petition to vacate judgment and amend complaint	25

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is untpublished, as of yet.
The opinion of the United States district court appears at Appendix "B" to the petition and is not published.

JURISDICTION

The date on which the United States Court of Appeals decided my case was 6/17/99.
No petition for rehearing was filed in this case.
The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) Respondent is a criminal entity that makes money out of repeating criminal activity of fraud, mail fraud, extortion and threats in violation of organized crime control act 1970 18, U.S.C. 1961-1968 and mail fraud. 18 U.S.C. 1341

2) Only the government may deprive petitioners from life, liberty and property under certain conditions. Respondent has no such right (Amendment 4, 5) under any circumstances.

STATEMENT OF THE CASE

BACKGROUND

1. The respondent Time Inc., is a major player in the sweepstakes fraud industry. Respondent has a stake of 50% in the American Family Publisher which is a corporation whose main business is sweepstakes fraud. The parent corporation of respondent, Time Warner, owns and controls the big business of sweepstakes fraud in U.S.A. Respondent is a tile in a Mosaic of fraud perpetrated against the public for years, by Time Warner Inc.

2. Currently the industry of sweepstakes fraud is under criminal investigation by 18 state attorney generals, about 20 civil lawsuits and subject to inquiry by congress.

3. Since the appointment of Judge Ralph Winter as Chief Judge for the Court of Appeals of The Second Circuit (Hereafter "CSS". The CSS has become an all affirmed cases court. The CSS has the highest rate of affirming cases among other circuits and in essence the people of U.S. would be better served if CSS will be revised or closed. The high affirmance of cases indicates that either the District Court judges may not err and thus no need for an appellate court or that CSS does not do his job and thus should be revised or closed. The above facts have an impact on Federal judges that need not to explain anything and decision by Federal judges in the Circuit has become more unexplenatory (no opinion offered) because there is no effective review of their decisions no matter what.

4. It was brought to the attention of Chief Judge Ralph Winter by petitioner that this situation is unacceptable, but all that Judge Winter did in the matter is to try to silence petitioner by imposing sanctions.

5. In the underlying case Judge Sack recused himself from the sham decision.

6. CSS in essence affirms District Court decisions for the same reasons of the District Court, even if the District Court has not explained or has not given any explanation to the decision. These are arbitrary and capricious decisions.

7. The record in this case contains about 130 pages of allegations, facts, and evidence, which were totally disregarded.

The Process In The District Court.

8. The plaintiffs alleged that defendant operate a scam in which they offer a "Package Deal" to each and every potential subscriber to Time Magazine in which they offer a grand prize plus an optional subscription to Time Magazine for discount price. Once a subscriber agrees to the deal, they "forget" about the grand prize and do not allow the new subscoribers to renage on their undertaking to subscribe to Time Magazine and such subscriber is forced to continue and pay for the subscription against his will.

9. Plaintiffs alleged that the scam inflict pain and suffering on the public, defraud the public of his money, and even endanger the life of people who accept the fraudulent promises as true.

10. Plaintiffs requested to compensate them for their damages as follows:

a) Plaintiffs who resides in the state of Maryland traveled to Tampa, Florida to collect his "Grand Prize" he extended costs, lodge, expenses, loss of salary and endured pain and suffering which culminated in his suicide attempt. He request to compensate him for his medical bills and his out of pocket money, and his pain and suffering.

b) The female defendant who reside in New York requested to refund the money she paid for the subscription, which she was unable to get rid of. She is not a party in the petition for writ of certiorari.

c) Plaintiff representative filed a motion for partial summary judgment to award him the grand prize as promised, as well requested to award the grand prize to each and every one who was promised so. To refund the subscription money, and to share the profit of the scam.

d) Due to the fact that defendants were unable to compensate their victims petitioners requested to appoint a receivership.

11. The plaintiffs (petitioners) alleged subject matter jurisdictions on the ground of diversity (28 U.S.C. 1331) and Federal issue (28. U.S.C. 1332).

Plaintiffs alleged based on the record that defendant is a criminal entity that makes money out of repeating criminal activity, of fraud, mail fraud, extortion and threats in violation of Organized Crime Control Act of 1970 U.S.C. 1961-1968 and mail fraud 18 U.S.C. 1341 Carpenter vs. U.S.A. 484 U.S. 19, 26 (1987). McNally vs. U.S. 350, 358 (1987) 483, Hammerschmidt Vs. U.S. 182, 188 (1924) (Hereafter - RICO). Plaintiffs alleged that only the government may deprive plaintiffs from life and property under conditions of probable cause, due process and fairness. But respondents have no such right under any circumstances and thus respondents conduct violates petitioner constitutional rights.

Plaintiffs alleged that Mr. Joseph Lax who resides in the State of Maryland is in complete diversity with defendants and thus other plaintiffs may be added to Mr. Lax under the Doctrine of Supplemental Jurisdiction (28 U.S.C. 1367). Plaintiff Moore who is in complete diversity with Head of Department of Sweepstakes in Florida. Mrs. Matthews is in supplemental jurisdiction with defendant, and in complete diversity with Time Inc. based on plaintiffs allegations that the principal business of fraud is operated out of Tampa, Florida, predicated on defendants documents. Plaintiffs alleged also that Moore is in proper diversity under the "Muscle Test" or the "Most Extensive Contact With The Public" which is the prevailing standard.

12. The District Court declined to hold oral arguments or to allow cross examination of defendants affidavit, declined to explain his decision and referred the matter for recommendation to magistrate judge. Magistrate judge erred on the facts, (even on the basic fact who are the plaintiffs) and on the law, and thus plaintiffs objected to the recommendations and when district court adopted the recommendation, plaintiff filed a motion under Rule 60 (b) and reiterated the facts and the law but D.C. denied the motion by a mere handwritten notation on the record with no explanation.

The Decision of Court of Appeals

13. The decision of Court of Appeal as usual, affirms from the same reasons District Court decision. But D.C. did not gave any reasons to deny the motion under Rule 60 (b) nor does the court make any elaborate decision in this case, he just adopted the magistrate judge recommendation "without prejudice".

14. Court of Appeal reiterates the same wrong facts (even on who are the plaintiffs) do not find any "hint of legal theory" for reversal (as they don't find for other thousand cases a year). The impression of "not sophisticated" by magistrate judge came from two minutes of telephone conference in which one minute was alloted for petitioner in which he reiterated his allegations on the record.

15. The issue of subject matter jurisdiction is a standard matter, which the court may raise Sua Sponte. Petitioner presented facts and statutes of law which clearly supports his claim. A petitioner must support his claim with precedents when a statute is unclear, dubious, or unique. The issue of subject matter jurisdiction of the court is well settled and construction of law based on the fact (correct facts) is up to the court. This is a mere excuse to affirm another district court decision. This Court of Appeal is obviously in the opinion that all appeals should be affirmed, and do discourage by sanctions further appeals which are futile in second circuit. This is the reason that Judge Sack recused himself from this sham decision

REASONS FOR GRANTING THE PETITION

1. The decision by the Court of Appeals is arbitrary and capricious and it represents a trend which should be overturned.

2. The sanctions in this case are unjustified and may further advance arbitrary and capricious rulings which ill serve the interest of justice.

3. It is in the interest of the public to be protected from mass fraud by sweepstakes corporations and to be compensated adequately.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Teddy I. Moore, esq.
160-05, Horace Harding
Flushing, NY 11365

Tel.: (718) 939-4966

Date: July 5, 1999

APPENDIX A
UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 1998

(Submitted: June 8, 1999 Decided: June 17, 1999

Docket Nos. 98-9535, 98-9537 (XAP)

TEDDY MOORE,

Plaintiff-Appellant-Cross-Appellee,

- v -

TIME, INC.,

Defendant-Appellee-Cross-appellant,

ELIZABETH MATTHEWS

Defendant.

Before: Winter, Chief Judge, and Oakes, Circuit Judge. *

Appeal from an order of the United States District Court for the Eastern District of New York (Edward R. Korman, Judge) dismissing appellant's complaint for lack of subject matter jurisdiction and denying both parties' motions for sanctions under Fed. R. Civ. P. 11. We affirm substantially for the reasons stated by the district court. In addition, we grant appellee's motion for sanctions pursuant to Fed. R. App. P. 38.

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* Judge Sack who was originally member of the panel, recused himself after submission of the appeal. The appeal is being decided by the remaining two members of the panel who are in agreement. See 2d Cir. R. § 0.14 (b).

APPENDIX A

TEDDY I. MOORE, Esq., pro se, Flushing, New York, for Plaintiff-Appellant-Cross-Appellee.

PAUL G. GARDEPHE, Deputy General Counsel, Time Inc., New York, New York, for Defendant-Appellee-Cross-Appellant.

PER CURIAM:

Teddy I. Moore, an attorney appearing pro se, appeals from Judge Korman's dismissal of his complaint for lack of either federal question or diversity jurisdiction and denying his motion under Rule 11 for sanctions against Time, Inc. Time cross-appeals Judge Korman's decision to deny its motion for sanctions against appellant, and both parties move for appellate sanctions pursuant to Fed. R. App. P. 38. We affirm on the appeal and cross-appeal for substantially the reasons stated by the district court, see Moore v. time Inc., 98-CV-3886 (ERK) (E.D.N.Y. Oct. 30, 1998) (adopting report of Magistrate Judge Gold), and deny Moor's motion for Rule 38 sanctions.

In addition, we also grant Time's motion for Rule 38 sanctions against Moore. Moore pursued this appeal despite Magistrate Judge Gold's strong admonition that his complaint presented no non-frivolous claims. Indeed, the district court stated its belief that Moore"s conduct may have violated Rule 11 but declined to impose sanctions thereunder based in part upon its impression of Moore as "not sophisticated." Moore v. Time Inc., CV-98-3886 (ERK), at 5 (E.D.N.Y. Oct. 6, 1998) (Report and Recommendation of Magistrate Judy Gold). Despite this clear warning, Moore pressed on. His appellate brief leaves the reader "without a hint of the legal theory proposed as a basis for reversal." Ernst Haas Studio, Inc. v. Palm Press, Inc., 164 F. 3d 110, 112 (2d Cir. 1999) (per curiam). It cites no case law to support his argument and surely fails to satisfy Rule 28's requirement that it contain "the contentions of the appellant on the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on." Fed. R. App. P. 28 (a) (6); Ernst Haas Studio, 164 F. 3d at 112. Particularly in light of the fact that his is not the first frivolous appeal Moore has brought to

this court, see Hoffman v. City of New York, No. 98-7758, 1999 WL 66158 (2d Cir. Feb. 10, 1999), we believe an award of sanctions is necessary to deter future frivolous appeals. We therefore order as a sanction pursuant to Rule 38 an ward of $1000 in attorneys fees as well as double costs. See Frd. R. App. P. 38 (court of appeals may award just damages and single or double costs to the appellee").

APPENDIX B

UNITED STATES DISTRICT
COURT EASTERN DISTRICT
OF NEW YORK

----------x

TEDDY MOORE, et al.,

Plaintiffs

v

TIME INC., and ELIZABETH MATTHEWS,
Judge

Defendants.

----------x

REPORT AND
RECOMMENDATION
CV-98-3886 (ERK)

ORDER
The recommendation of the U.S. Magistrate

is adopted
(unclear)
Signed. (unclear)
10/18/98.

Introduction

Plaintiff Teddy Moore, an attorney proceeding *pro se*, has filed a putative class action complaint against defendants Time Inc. and Elizabeth Matthews. In essence, plaintiff alleges that defendants notified him that he was the winner of a sweepstakes prize when in fact he was not. Plaintiff seeks to recover damages for defendants' alleged breach of promise and implied contracet, for his detrimental reliance upon defendants' fraudulent promise, and for intentional infliction of eemotitonal distress.

Plaintiff, relying upon the sweepstakes documents sent to him by defendants has moved for summary judgment. Defendant Time has cross-moved to dismiss or for summary judgment, asserting among other things that the parties are not diverse, and that this Court therefore lacks subject matter jurisdiction. Finally, each side seeks to have sanctions imposed upon the other.

By Order dated August 31, 1998, the Honorable Edward R. Korman referred these motions to me for report and recommendation. I held a conference in this action on September 29, 1998. The parties

advised the Court that their positions on the pending motions had been fully briefed, and that oral argument was not required.

Discussion

A. Diversity Jurisdiction

Plaintiff alleges in his complaint that he is a resident of the State of New York. Compl. ¶ 1. Plaintiff further alleges that Time is incorporated in Delaware. Compl. ¶ 2. Plaintiff contends that this action thus falls within the diversity jurisdiction of this Court pursuant to 28 U.S.C. § 1332.

A corporation is deemed to be a citizen of both the state in which it is incorporated and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Time asserts that its principal place of business is in New York, and that there is, accordingly, no diversity between the parties to this action.

In support of its contention that New York is its principal place of business, Time has submitted the affidavit of Paul G. Gardephe, its Associate General Counsel. A court may properly consider evidence outside the pleading, including facts presented in the form of affidavits, when resolving challenges to subject matter jurisdiction. Antares Aircraft, L.P. v. Federal Republic of Nigeria, 948 F. 2d 90, 96 (2d Cir. 2992), vacated on other grounds, 505 U.S. 1215, 112 S. Ct. 3020 (1992).

Gradephe states in his affidavit that Time, a publishing company with offices in several states, has had its corporate head-quarters in New York City since 1949. Time's executive staff and its personnel, public relations, finance, legal purchasing, advertising and marketing departments are located in New York, where the vast majority of its employees work. According to Gardephe, the employees responsible for the sweepstakes mailing at issue in this case work in Time's New York offices. Gardephe Aff. ¶¶ 7-8.

When a corporation has operations in several states, its principal place of business is determined by the location of its "nerve center", or "the place where overall corporate policy originates." Royal Indemnity Co., v. Wyckoff Heights Hosp., 953 F. Supp. 460, 462 9E.D.N.Y. 1996) (quoting R. G. Barry Corp. v. Mushroom

Makers, Inc. 612 F 2d 651, 654-55 (2d Cir. 1979)). Clearly, the allegations of the Gardephe affidavit are sufficient to establish that Time's "nerve center" is in New York, and that New York is therefore Time's principal place of business for purpose of Section 1332.b.

The burden of proving that an action is one between citizens of different states rests with the party seeking to invoke the court's diversity jurisdiction. See, e.g., Boyd, Weir & Sewell, Inc. v. Fritzen-Halcyon Lijn, Inc., 709 F. Supp. 77, 78 (S.D.N.Y.). Plaintiff's complaint contains no allegations with respect to Time's principal place of business. Moreover, plaintiff has failed to submit any facts to rebut those asserted by Gardephe in his affidavit. Finally, as noted above, plaintiff acknowledged during a conference held with the Court that his position was fully set forth in the papers he submitted, and that he did not seek to amplify his position by means of additional submissions or oral argument.

For these reasons, I conclude that plaintiff has failed to establish that he and defendant Time are citizens of different states. Accordingly, complete diversity of citizenship is lacking, and plaintiff's attempt to invoke this Court's diversity jurisdiction should be rejected.

B. Federal Question Jurisdiction

Plaintiff also contends that defendants have deprived him of his right to pursue happiness, and that this amounts to a violation of his constitutional rights. Accordingly, argues plaintiff, this Court may exercise its federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331. However, plaintiff's complaint makes no allegation of state action, and the named defendants are clearly not public officials. The complaint therefore fails to state a claim under federal law. See 42 U.S.C. § 1983.

C. Rule 11 Sanctions

Defendant Time seeks to have Rule 11 sanctions imposed upon plaintiff. A Court may impose sanctions when a party asserts frivolous claims, a brief discussion of their merits is warranted.

APPENDIX B

Plaintiff alleges in his complaint that defendants fraudulently notified him that he was the winner of a cash sweepstakes prize. However, the notice plainly advised plaintiff that his right to the prize was conditioned upon his "hav[ing] and return[ing] the Grand Prize winning entry in time." Gardephe Aff. Ex. E. It is, therefore, difficult to imagine how a reasonable person could have concluded that they had in fact won the sweepstakes prize. Moreover, as defendant Time points out, other courts have considered claims based upon similar notices, and have rejected them. See e.g. Freeman v. Time, Inc., 68 F. 3d 285 (9th Cir., 1995) (applying California law); Haskell v. Time, Inc. 857 F. Supp. 1392 (E.D. Cal. 1994) (same). In addition, by letter dated June 19, 1998, Time's counsel advised plaintiff that New York was Time's principal place of business, and that plaintiff's assertion of diversity jurisdiction was unfounded. Gardephe Aff. Ex. B. Plaintiff has failed to point to any evidence rebutting Time's assertions in this regard, or to offer any reasonable explanation for his decision to press his claim of diversity jurisdiction despite them. Finally, plaintiff's correspondence with Time suggests that he may have brought this action hoping to obtain a quick settlement rather than believing in good faith in the merits of his claims. Gardephe Aff. Ex. C, D.

For these reasons, I conclude that plaintiff's claims are not warranted by existing law or by a non-frivolous argument to extend, modify or reverse existing law, and the Rule 11 (b)(2) may well have been violated. Nevertheless, I respectfully recommend that defendant Time's motion for sanctions be denied. First, although plaintiffs is an attorney, it appears from his complaint and motion papers that he is not sophisticated. Second, assuming the recommendations set forth in this report are adopted, Time will have brought about the dismissal of this case early in its life, and without substantial effort. Finally, time's motion has itself been filed in violation of Rule 11 (c)(1)(A), which requires that "[a] motion for sanctions under this rule shall be made separately from other motions."

Conclusion

For the reasons stated above, I respectfully recommend that defendant Time's motion for summary judgment be granted, that plaintiff's motion for summary judgment be denied, and that this case

be dismissed. I further recommend that the parties motions for sanctions be denied.

Any objections to the recommendations made herein must be filed with the Clerk of the Court and the Chambers of the Honorable Edward R. Korman within ten days of receiving this Report and Recommendation and, in any event, on or before October 28, 1998. Failure to file timely objections may waive the right to appeal the District Court's Order. See 28 U.S.C § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72; Small v. Secretary of Health & Human Services, 892 F. 2d 15, 16 (2d Cir. 1989).

Dated: Brooklyn, New York
October 6, 1998

(signed)

Steven M. Gold
United States Magistrate Judge

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

TEDDY MOORE, et al.,

Plaintiffs

Judgment
98 CV 3886 (ERK)

- against -

TIME INC. and ELIZABETH MATTHEWS,

Defendants.

----------x

An order of the Honorable Edward R. Korman, United States District Judge, having been filed on October 23, 1998, adopting the October 6, 1998 Report and Recommendation of Magistrate Judge Steven M. Gold; and, dismissing the complaint without prejudice; it is

ORDER and ADJUDGED that the plaintiff take nothing of the defendants; that the October 6, 1998 Report and Recommendation of Magistrate Judge Steven M. Gold is adopted; and, that the complaint is dismissed without prejudice.

Date: Brooklyn, New York
October 30, 1998

(signed)

ROBERT C. HEINEMANN
Clerk of Court

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

TEDDY MOORE, et al

PLAINTIFFS

VS.

1. TIME INC.
2. ELIZABETH MATTHEWS

DEFENDANTS

Class Action
Jury Trial Requested
CV 98 3886
Korman J.
Gold M. J.

----------x

A. **THE PARTIES**

1. Plaintiff is a New York resident, a member of the injured class.

2. Defendant No. 1, is Time Magazine an entity incorporated in Delaware.

3. Defendant No. 2, is director of Sweepstakes of Defendant 1, and thus responsible for the scam, which is operated out of Tampa, Florida.

B. **CLASS ACTION**

This case is proper to adjudicate as class action because:

4. Plaintiffs will sue as representative of all the class.

5. The class is so numerous that joinder of all members is impractical.

6. There are questions of law and fact common to the class.

7. The claim of representative parties are typical of the claim of the class.

8. The representative parties will fairly and adequately protect the interest of the class.

9. Adjudication with respect to individual member of the class would as a practical matter be dispositive of the interests of other members not parties to the adjudication or substantially impair or impede their ability to protect their interest.

10. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

11. The court is requested to certify this action as class action and protect the members of the class for fair conduct of action.

C. **BASIC FACTS**.

12. **PRELIMINARY STATEMENT:** This is a case brought against defendants for intentional infliction of pain and suffering upon plaintiffs for their business benefit. The modus operandi of defendants was to boost false and fraudulent expectation of winning a grand prize, that eventually did not materialize and it cause pain, suffering, frustration and even attempts to commit suicide. Defendants outrageous scam to make a quick buck in disregard of the plight of others that they put in jeopardy should be properly compensated and punished.

13. On or about April 30, 1998, defendant notified plaintiffs on the final result of sweepstakes in which plaintiff won a cash reward of $833,377.00, defendant indicated that the awarded prize is guaranteed and bonded "eligible to receive" and that a bank check of the award is on the way to plaintiff. All they asked was to return the entry certificate, which was made outright. And thus eligible for an additional cash bonus of $100,000,00 and waited for no avail for a bank check via certified mail. Defendant indicated that plaintiff is eligible for the guaranteed award whether "we hear from you or not" and they offered to subscribe to Time Magazine for a discount price.

14. It happened to be a scam only, intended to boost false expectations, knowing that they are false, for purpose to entice business at any price. Using the name of Time Magazine to create a

false impression of a real notice of winning, which brought frustration, extreme emotional distress, and even suicide attempts by victims of defendant. All this should be properly compensated by defendant.

D. ALLEGATION OF JURISDICTION AND CAUSE OF ACTION

15. Jurisdiction is found as a civil action where the matter in controversy exceeds the value of $50,000.00 between diverse parties (28 U.S.C. 1332) and as a federal issue of depriving plaintiffs of right to pursue happiness and not to pursue bogus and fraudulent prizes (28 U.S.C. 1331)

16. The cause of action is predicated on one or more of the following:

a) A breach of promise to pay the award.

b) A breach of implied contract that was responded by an act.

c) A cause in action for detrimental reliance of a bogus promise in which plaintiffs changes their situation for the worse.

d) A misrepresentation in writing that caused damage.

e) An intentional action to inflict harm on plaintiff, which is outrageous and is subject to punitive damages.

f) A fraudulent scheme to entice business that caused damages, with reckless disregard to the effect on others.

g) An unjust enrichment that should be disgorged.

h) Negligence for breach of duty of reasonableness which caused damage.

17. Proper venue is alleged based on Plaintiffs residence and place cause of action accrued.

E. WHEREFORE PLAINTIFFS DEMAND

APPENDIX C

18) To award plaintiffs compensatory and punitive damages which are allowed for intentional causation of damage and for outrageous conduct which caused damages; in the amount the jury may found fit including the cost of the action and reasonable attorney fees.

19) For purpose of judgment by default plaintiffs will demand twenty million dollars (20 million)

(singed)_____

ATTORNEY FOR PLAINTIFF

APPENDIX D

DOCKET NO 98-9535 (L)

(Cross Appeal 98-9537)(XAP)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Teddy Moore, Plaintiffs-Appellants-Cross-Appellees

- AGAINST -

1. Time Inc. Defendants-Appellees-Cross-Appellants
2. Elizabeth Matthews

APPELLANTS' REPLY

Plaintiffs,
c/o Teddy I. Moore, Esq.
160-05, Horace Harding
Flushing, NY 11365
Tel. (718) 939-4866

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT

APPENDIX D

1. Preliminary Statement	1
2. Federal Jurisdiction	1
3. Diversity Jurisdiction	1 - 2
4. Defendant Perpetrated Fraud on the Court	2
5. Sanctions against Defendant	3
6. Conclusion	3

TABLE OF AUTHORITIES

1. "RICO" 18 U.S.C. 1961-1968	1
2. 28 U.S.C. 1367	1
3. FRCP 60 (b)	2

APPENDIX D

PRELIMINARY STATEMENT

1. Based on the Defendants brief it is obvious that Defendant do not contest any issues in this case except for the issue of subject matter jurisdiction, and therefore, since the D.C. has jurisdiction in the matter this court should automatically enter a judgment that certifies the case as a class action, enters a partial summary judgment, and appoint a receiver as a matter of consent of the parties, and sanction defendant for a frivolous cross appeal.

FEDERAL JURISDICTION

2. The record alleged (APP-72,8,44,49) that Defendant is a Criminal entity that makes money out of repeating criminal activity of Fraud, Mail Fraud, Extortion and threats. This is a clear violation or organized crime control act of 1970 18 U.S.C. 1961-1968 (Hereafter - "Rico") and thus proper to adjudicate under federal jurisdiction.

3. Only the government may deprive plaintiffs from life, liberty and property under conditions of probable cause, due process and fairness. Defendant have no such right under any circumstances and thus defendant conduct violates plaintiff constitutional rights and thus proper as a federal issue jurisdiction.

DIVERSITY JURISDICTION

4. Mr. Josef Lax who resides in the state of Maryland is in complete diversity with defendants and thus other plaintiffs may be added to Mr. Lax under the doctrine of supplemental jurisdiction under 28 U.S.C. 1367. When a Federal Court has jurisdiction over a claim (including additional parties) arising out of the same controversy may be added even though these claims/parties wouldn't independently satisfy the requirements of jurisdiction.

5. Plaintiff Moore is in complete diversity with head of Department of Sweepstakes in Florida, Mrs. Matthews (a real name, assumed name, fictional, or misleading) and thus in supplemental jurisdiction with Time Inc.

6. Plaintiff Moore, is in complete diversity with Time Inc., based on Plaintiffs allegation that the Principal Business of fraud is operated out of Tampa, Florida based on documents of defendant (APP-17-26).

7. Plaintiff Moore is in proper diversity with Time Inc., under the "Muscle Test" or the "most extensive contact with the Public" which occurred from Florida.

8. Even had defendants affidavit to dismiss been true, and even had the court applied in this case the "Nerve Center" still, because the prevailing standard is pointed in provision 7, thus in any case plaintiff should prevail. Let alone when defendants affidavit is false, and no cross examination was conducted. The false, misleading and threatening presentation of defendant in court is a complementary part of the modus operandi to defraud.

9. Defendant are precluded to present evidence to contradict their admission in writing that the scam is operated out of Tampa, Florida under the "Parole evidence rule" and the record is overwhelming to support plaintiffs claim for proper jurisdiction.

10. Defendants allege on the one hand that the court has a right to review matters extraneous to the complaint concerning jurisdiction on the other hand claim that the name "Josef Lax" does not appear in the complaint. This is an irrational and inconsistent position.

DEFENDANT PERPETRATED FRAUD ON THE COURT

11. Despite all the allegations to the contrary by Plaintiffs, Defendant insist that this case is a case brought by "Teddy Moore, an attorney who is proceeding Pro se" (APP-78). This is false but this is how this criminal entity presented the matter to the court. "On January 13, 1999 Plaintiffs made a motion to D.C. to vacate the D.C. judgment under Rule 60(b) for fraud and other related matters and defendant that filed his brief on February 24, 1999 has not responded to these allegation, despite ample opportunity, and reiterates the fraud on the court of appeal.

APPENDIX D
SANCTIONS AGAINST DEFENDANT

12. Defendant that is a criminal entity, presented a false affidavit to D.C. that caused the dismissal presented false facts, and the frivolous cross appeal was filed for purposes of threats and extortion which is subject to sanctions.

CONCLUSION

The Appeal should be granted. Cross Appeal denied and defendant should be sanctioned.

(signed)
ATTORNEY FOR PLAINTIFFS

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

TEDDY MOORE, et al — CV - 98 -3886
PLAINTIFFS — (ERK)

-against-

TIME INC.
ELIZABETH MATTHEW
DEFENDANTS

----------x

FIRST VOLUME OF RECORD

Order

The plaintiffs motion pursuant to Rule 60(b) and to file an amended complaint is denied.

S/ Judge Korman
3/1/99.

Plaintiffs
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